

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 08/15)

Fiscal Year 2016/17	Business Unit 7350	Department Industrial Relations	Priority No. 4
Budget Request Name 7350-010-BCP-DP-2016-GB		Program 6100 - DIVISION OF OCCUPATIONAL SAFETY & HEALTH	Subprogram 6100010 - COMPLIANCE

Budget Request Description
Mining and Tunneling Safety Inspectors

Budget Request Summary

This proposal for the Division of Occupational Safety and Health (DOSH) requests 2.0 positions and \$563,000 for 2016/17 and \$548,000 ongoing in the Occupational Safety & Health (OSH) Fund to provide resources to begin to close the gap between current inspection levels and current statutory requirements for inspecting California tunnels and mines.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR Project No. Date:		

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>Karen Burome</i>	Date <i>12/24/15</i>	Reviewed By <i>John Garcia</i>	Date <i>12/24/15</i>
Department Director <i>Musheer Bader</i>	Date <i>12/24/2015</i>	Agency Secretary <i>[Signature]</i>	Date <i>1-4-16</i>

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA *[Signature]* Date submitted to the Legislature
1/7/16

A. Budget Request Summary

The Department of Industrial Relations (DIR) requests 2.0 positions and \$563,000 for 2016/17 and \$548,000 ongoing in the Occupational Safety & Health (OSH) fund for the Division of Occupational Safety and Health (DOSH) to provide resources to begin to close the gap between current inspections levels and current statutory requirements for inspecting California tunnels and mines. Included in the cost of this proposal is \$155,000 for overtime expenditures, which will effectively add one additional position, for the equivalent of three additional inspectors.

DOSH also plans to fund a study to examine the statutory requirements of the Tom Carrell Memorial Tunnel and Mine Safety Act of 1972 in conjunction with advancements in technology, state and federal standards and regulations, and any other industry factors to determine what changes, if any, to current statutory and/or regulatory requirements might be advisable.

B. Background/History

In 1973, California received initial approval as a state plan to assume responsibility for developing and enforcing occupational safety and health laws in lieu of Federal Occupational Safety and Health Administration (OSHA) performing those functions in California. Continued approval and funding of California's State Plan by OSHA is contingent on our performing in a manner that is "at least as effective as" the federal program. (See 29 US Code § 667.) California has enacted both a statutory and regulatory framework necessary to meet this minimum requirement. (See, e.g., the California Occupational Safety and Health Act of 1973, codified in part at Labor Code §§ 6300-6719).

DOSH is also responsible for administering the provisions of The Tom Carrell Memorial Tunnel and Mine Safety Act of 1972, codified at Labor Code sections 7950-8004, which the Legislature enacted in response to the tragic explosion of the Sylmar Tunnel in 1971 that killed 17 workers. DOSH, through its Mining and Tunneling Unit contained within the Enforcement Branch:

- (a) Conducts pre-job safety conferences prior to any initial tunneling or underground mining operation;
- (b) Performs mandated periodic inspections of tunnels under construction, underground mines, surface mines, quarries and enforces compliance with Title 8 as required;
- (c) Conducts accident, complaint and referral inspections of activities at mines and tunnels under construction and enforces compliance with Title 8 as required;
- (d) Gives certification exams for safety representatives and gas testers to work in tunnels and mines;
- (e) Gives licensing exams for blasters to use explosives and provides oversight on all demolition projects using explosives;
- (f) Issues permits allowing the use of diesel engines in tunnels and mines and enforces compliance with the provisions of the permits.

Analysis of Problem

Resource History (Dollars in thousands)

Program Budget	2010/11	2011/12	2012/13	2013/14	2014/15
Authorized Expenditures	3,643	3,707	3,083	3,627	3,758
Actual Expenditures	3,167	3,369	2,883	3,132	3,572
Revenues					
Authorized Positions	31.0	29.0	25.0	23.0	25.0
Filled Positions	24.4	24.4	20.8	20.6	21.5
Vacancies	6.6	4.6	4.2	2.4	3.5

Workload History

Workload Measure	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Average
Complaints & Accidents	22	21	35	36	49	27	32
Tunnels - Total Mandated Inspections	415	435	478	391	394	454	428
Tunnels - Inspections	144	103	93	46	79	118	97
Tunnels - No Inspection	271	332	385	345	315	336	331
Mines - Total Mandated Inspections	512	509	502	503	491	513	505
Mines - Inspections	224	353	336	226	194	313	274
Mines - No Inspection	288	156	166	277	297	200	231
Tunnel Pre-Jobs	267	256	281	267	232	275	263
Examinations	492	421	449	415	375	320	412
Training ¹ (days)	324	396	352	220	264	352	318
Administrative Duties ² (hours)	639	639	568	355	426	568	533

C. State Level Considerations

There are no State level considerations or impacts which affects other State Departments directly by this BCP.

This proposal supports and is consistent with the Administration's policies to create a safe working environment for California workers through inspection and enforcement actions against employers with unsafe or unhealthful workplaces.

No other state level impacts or considerations exist.

D. Justification

As indicated in the proposal Summary, approval of this proposal will help DIR and DOSH take a step toward statutory compliance in enforcing occupational safety and health requirements in mining and

¹ Training - Mandatory classroom, web-based and field training for each inspector, averaging 36 days

² Administrative Duties - Average 71 hours per inspector per year, and include staff meetings, responding to phone inquiries, testing and calibration of equipment, completion of time sheets and travel expense claims, Acting Supervisor duties, providing technical support to the regulated community, reading Division's Policy and Procedure Manual and its updates, delivering speeches to public groups, etc.

Analysis of Problem

tunneling operations. This approach will allow the division to exercise due diligence in both recruiting and hiring qualified personnel, as well as ensuring adequate training for these new staff prior to deployment into the field.

Labor Code section 7953 expressly requires that adequate resources be provided for the inspections listed above in Section B: "Sufficient manpower shall be maintained to provide for four annual inspections of underground mines, one inspection of surface mines or quarries annually, and six inspections of tunnels under construction annually."

This intent was reiterated as part of the voter-approved Proposition 97, which reinstated funding for Cal/OSHA in 1988 and is codified in part at Labor Code section 6303.5: "Nothing in this division shall be construed to limit the jurisdiction of the state over any employment or place of employment by reason of the exercise of occupational safety and health jurisdiction by any federal agency if federal jurisdiction is being exercised under a federal law which expressly authorizes concurrent state jurisdiction over occupational safety or health issues."³

In addition to the other benefits previously listed, the study mentioned in the Summary section will provide the division with recommendations regarding what steps, if any, could be taken to utilize a collaborative, coordinated, and/or complementary approach with regard to federal agency inspections of mines.

As indicated by the workload history table, the division currently lacks the resources to fulfill its statutory mandate to conduct all required inspections of tunnels and mines each year. Those requirements are as follows:

- Surface mines require 1 inspection/year;
- Underground mines require 4 inspections/year;
- Tunnels under construction require 6 inspections/year;
 - Large tunnel projects (i.e., tunnels under construction for 12 to 14 months) require 6 mandated inspections.
 - Medium tunnel projects (i.e., tunnels under construction for 4-6 months) require an average of 2 mandated inspections.
 - Small tunnel projects (i.e., tunnels under construction for less than 4 months) require, in general, only one inspection.

Tunnel Inspections

Approximately 260 tunnels are constructed in California each year. As shown above, tunnel projects are broken into three groups, depending on the amount of time required to complete the construction. Large tunnel projects, roughly 30 under construction each year, are primarily intended for transport of vehicles or trains or transfer of water. These include the Tom Lantos (Devil's Slide), the new bore of the Caldecott tunnels for vehicle transportation, and the 3.5 mile New Irvington Tunnel for San Francisco's domestic water supply. Medium tunnel projects, 25-35 each year, may be for transport of vehicles or trains, transfer of water, building of caves for storage of wine in Napa and other wine-making regions, or transfer of wastewater in portions of the Sacramento Interceptor wastewater system. Small tunnel projects, which are the most numerous, are usually constructed by pipe-jacking methods when necessary not to disrupt surface activities, such as under city streets or active railroad lines, and are primarily intended for transfer of water.

As reflected in the workload history table, an average of 428 inspections of new tunnels has been required each year for the past six years as a result of new tunnel construction. An average of 77%

³ Although the Federal Mine Safety and Health Administration (MSHA) does inspect mines, the Federal Mine Safety and Health Act of 1977, as amended by the Mine Improvement and New Emergency Response Act of 2006, allows California and other states to have concurrent jurisdiction with the MSHA to inspect and regulate mining facilities (see 30 U.S.C. § 955).

Analysis of Problem

of these mandated inspections (or 331 as reflected in the workload table) were not inspected in accordance with statutory requirements. However, an onsite pre-job conference is conducted for every tunnel project.

Mine and Quarry Inspections

As reflected in the workload history table, an average of 505 inspections of mines and quarries were required each year for the last six years. An average of 46% of these mandated inspections (or 231 as reflected in the workload table) were not inspected in accordance with statutory requirements. The federal Mine Safety and Health Administration conducted an additional 291 inspections of California mines over the past year, in accordance with federal regulations. However, federal standards for mine inspections differ from California's regulatory standards. Mandates in the Labor Code express legislative intent to protect workers from the hazards of operations conducted in tunnels, mines, and quarries, which are among the highest-risk workplaces in the state. Even without regard to the expected construction of 20 major tunnels over the next three years, additional resources are needed to meet the state mandates designed to protect these workers.

E. Outcomes and Accountability

The increased number of mine and tunnel inspections will be measured and tracked as performance metrics on a monthly basis and reported internally to senior management within DOSH and executive management of DIR. Continuous monitoring, feedback, and communication will be maintained with the Mining and Tunneling Unit Principal Engineer and Supervising Senior Engineers to support and require improved performance based on the increased staffing. DOSH will also post an annual report on its website pertaining to the activities of the unit.

With the resources provided by this proposal the Mining and Tunneling Unit will be able to conduct an additional:

- 124 mandated tunnel inspections and
- 87 mandated mine inspections

Based on the results of the study noted above and upcoming tunnel projects, additional resources could be needed in the future.

F. Analysis of All Feasible Alternatives

Four alternatives were examined and are detailed below.

1. Do Nothing

This alternative was eliminated as it fails to address any of the issues raised and discussed in this proposal. This alternative would be to continue operating at the present understaffing levels at which statutory mandates cannot be met, and was determined not to be in the prudent or best interests of California workers, employers, and the public at large.

2. Maintain staffing levels while discontinuing all or some mine inspections

This alternative was considered and eliminated. As discussed above, the Legislature enacted the Tom Carrell Memorial Tunnel and Mine Safety Act in 1972 in response to the tragic explosion of the Sylmar Tunnel in 1971 that killed 17 workers. The Act requires that sufficient manpower "be maintained to provide for four annual inspections of underground mines, one inspection of surface mines or quarries annually, and six inspections of tunnels under construction annually." In addition, although the Federal Mine Safety and Health Administration inspects mines, federal law allows states to have concurrent jurisdiction in this area.

3. Approve this proposal

This alternative will provide resources to begin to close the gap, as reflected in the workload history chart, between current inspections levels and current statutory requirements for inspecting California tunnels and mines.

G. Implementation Plan

Upon passage of the Budget Act including this approved proposal, the following steps of the implementation plan would be undertaken in the time frames as identified.

This implementation plan identifies major steps, time frames, and milestones. The responsibility for managing this plan will reside with senior managers in DIR and DOSH and with the Principal Engineer and Supervising Senior Engineers in the Mining and Tunneling Unit. Staffing levels and performance metrics will be reported monthly, quarterly, and annually to DOSH and DIR leadership.

Implementation Plan

Implementation Task (5/20/16-6/2017)	May 16	June 16	July 16	Aug 16	Sep 16	Oct 16	Nov 16	Dec 16	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17
Advertise for Recruitment	X	X	X											
Conduct Interviews		X	X	X	X									
Begin Process to Contract for Study			X											
Hire and Complete Recruitment			X	X	X									
Conduct Training					X	X	X	X	X	X	X			
Managers/ Supervisors Mentor					X	X	X	X	X	X	X	X		
Assign Full Case Load											X	X	X	X
Complete Full Implementation														X
Monitor Performance Metrics								X	X	X	X	X	X	X
Study Concludes														X

H. Supplemental Information

N/A

I. Recommendation

The Department of Industrial Relations (DIR) requests 2.0 positions and \$548,000 ongoing in the Occupational Safety & Health (OSH) Fund (Attachment I) for DOSH to provide resources to begin to close the gap between current inspections levels and current statutory requirements for inspecting working conditions in California tunnels and mines. \$155,000 of the dollars will be dedicated to overtime expenditures, which will effectively add one additional position for a total of three additional inspectors.

Analysis of Problem

Based on the on the conclusions of the study to examine the requirements of the Tom Carrell Memorial Tunnel and Mine Safety Act of 1972 the department may seek approval of additional resources in future budget change proposals.

In an effort to meet the Governor's initiative for transparency in state government, DOSH will begin to post historical Mining and Tunneling information on its website during the 16/17 fiscal year, based on the most recent data available for completed inspection activity.

**DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
Mining and Tunneling Safety Inspectors
(dollars in thousands)**

Attachment I

	Actual 2013-14	Actual 2014-15	Projected 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19
3121 Occupational Safety and Health Fund						
BEGINNING BALANCE	24,884	37,268	47,882	33,173	38,155	38,155
Prior Year Adjustments	1,234	5,726	-	-	-	-
Adjusted Beginning Balance	26,118	42,994	47,882	33,173	38,155	38,155
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS						
Revenues:						
4121600 Elevator and Boiler Inspection Fees (Aerial Tramway Revenues)				524	524	524
4122000 Employment Agency License Fees (Asbestos Revenues)				650	650	650
4127300 Refinery Fees	5,351	356	4,456	3,955	3,955	3,955
4129200 Other Regulatory Fees	45,092	64,850	51,839	73,604	70,759	70,759
4129400 Other Regulatory Licenses and Permits (Portable Amusement)				365	365	365
4163000 Investment Income - Surplus Money Investments (plus BCPs)	50	71	50	55	55	55
4173000 Penalty Assessments (Aerial Tramway & Amusement Rides)				2	2	2
Transfers from Other Funds:						
From 0096 Balance Transfer per 13/14 BCP # DIR 13-03	13,699					
From 0368 Balance Transfer per 16/17 Revenue & Exp Alignment BCP				1,418		
From 0369 Balance Transfer per 16/17 Revenue & Exp Alignment BCP				765		
Total Revenues, Transfers and Other Adjustments	64,192	65,277	56,345	81,338	76,310	76,310
Totals Resources	90,310	108,271	104,227	114,511	114,465	114,465
EXPENDITURE AND EXPENDITURE ADJUSTMENTS						
Expenditures:						
0840 State Controller (State Operations) / MyCalPays	2	4		-	-	-
7350 Department of Industrial Relations (State Operations)	52,813	60,343	70,947	71,100	71,100	71,100
16/17 Mining and Tunneling Safety Inspectors BCP				563	548	548
16/17 Revenue and Expenditure Alignment for Various Funds BCP				4,016	4,008	4,008
16/17 Amusement Ride and Tramway Staffing Increase BCP				570	547	547
8880 Financial Information System for California (State Operations)	227	42	107	107	107	107
Total Expenditures and Expenditure Adjustments	53,042	60,389	71,054	76,356	76,310	76,310
FUND BALANCE	\$37,268	\$47,882	\$33,173	\$38,155	\$38,155	\$38,155
Reserve for economic uncertainties	37,268	47,882	33,173	38,155	38,155	38,155

BCP Fiscal Detail Sheet

Budget Request Summary

	CY	BY	BY+1	FY16	BY+2	BY+3	BY+4
Positions - Permanent	0.0	2.0	2.0		2.0	2.0	2.0
Total Positions	0.0	2.0	2.0		2.0	2.0	2.0
Salaries and Wages							
Earnings - Permanent	0	227	227		227	227	227
Overtime/Other	0	155	155		155	155	155
Total Salaries and Wages	\$0	\$382	\$382		\$382	\$382	\$382
Total Staff Benefits	0	109	109		109	109	109
Total Personal Services	\$0	\$491	\$491		\$491	\$491	\$491
Operating Expenses and Equipment							
5301 - General Expense	0	3	3		3	3	3
5302 - Printing	0	2	2		2	2	2
5304 - Communications	0	2	2		2	2	2
5306 - Postage	0	3	3		3	3	3
5320 - Travel: In-State	0	5	5		5	5	5
5324 - Facilities Operation	0	26	26		26	26	26
5344 - Consolidated Data Centers	0	7	7		7	7	7
5346 - Information Technology	0	8	8		8	8	8
5368 - Non-Capital Asset Purchases - Equipment	0	16	1		1	1	1
Total Operating Expenses and Equipment	\$0	\$72	\$57		\$57	\$57	\$57
Total Budget Request	\$0	\$563	\$548		\$548	\$548	\$548

Fund Summary

Fund Source - State Operations							
3121 - Occupational Safety and Health Fund	0	563	548		548	548	548
Total State Operations Expenditures	\$0	\$563	\$548		\$548	\$548	\$548
Total All Funds	\$0	\$563	\$548		\$548	\$548	\$548

Program Summary

Program Funding							
6100005 - Occupational Safety and Health Program	0	563	548		548	548	548
Total All Programs	\$0	\$563	\$548		\$548	\$548	\$548

DP Name: 7350-010-BCP-DP-2016-GB

Positions

[illegible]